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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,811	11/19/2001	Shawn Buchanan Greene	16911-8484	7339

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EXAMINER

CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,811

Applicant(s)

GREENE, SHAWN BUCHANAN

Examiner

Michael Cuff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 32-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 32-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-18, 32-38, 40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griner et al. in view of Walker et al. (5,945,653).

Griner et al. shows all of the limitations of the claims except for specifying a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy.

Griner et al. shows, figure 1, a system and method of creating digital recordings of live performances to be available shortly after the event has ended. (abstract) There is an event capture module 100 (inherently conducting an event), an event recording system 98 (recording the event), and a media recording module 300 (manufacturing copies). Page 6, paragraph 0065 states, "significant numbers of recordings can be available immediately upon the conclusion of the performance." (inherently, there is a plan for distributing copies). Paragraph 13 on pages 1 and 2 states, "performing artists and record companies may have to derive a greater percentage of their income from live performances. In addition to the revenue generated by ticket prices, a large portion of that income will likely come from concert merchandise, such as the T-shirts and

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posters now available at nearly every live performance.” (inherently, there is the sale of tickets and merchandise.)

Walker et al. teaches, column 17, lines 55-63, POS terminals where the actual functions that are to affect transactions may be set by merchants such as pre-purchased discounts as purchasing incentives and the like in order to increase revenue. (a POS and the opportunity for prospective event ticket purchasers to pre-purchase a recording copy)

Based on the teaching of Walker et al., it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Griner et al. system to incorporate the POS system of Walker et al. in order to increase revenue.

Claims 6, 7, 39, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griner et al. and Walker et al. (5,945,653) in further view of Stonedahl. (Note that the claimed subject matter in these claims is restricted to the filing date of the application.)

The combination of Griner et al. and Walker et al. shows all of the limitations of the claims except for specifying determining and calculating the number of copies.

Stonedahl shows, figure 1, a system for capturing and distributing event recordings. Figure 1 shows a live event system 300 (conducting live event). There is a central recording module 105 (recording live event). The attendee of the live event 101 uses a small handheld selection device 102, supplied to them by the event management to make the selections during the event (pre-purchased at event POS;

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page 3, second column, bottom). The selection device may relay information to an order processing system 111. The order collection system uses the information to generate production orders (calculating number of copies) that are formatted for use by a production facility 113 (manufacturing; page 3, first column, middle). The custom CD or other media can be delivered (distributing) to the attendee in as little as a matter of hours (cut off time/date) after the event. The system contains "local event centers" (box office, POS) at or near the event venue and "remote event centers" which are accessible by network connections, a web site interface, data or voice phone line connections, or by a physical store front (capable of receiving mail) or automated sales kiosk (page 3, first column, top). Customers can initiate the purchase process before, during and after the live event.

Based on the teaching of Stonedahl, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the combination of Griner et al. and Walker et al. system to incorporate the order collection system (calculating and determining) of Stonedahl in order to help a production facility.

Response to Arguments

Applicant's arguments filed 7/23/04 have been fully considered but they are not persuasive.

Applicant asserts that the combination of Griner and Walker are improper in that there is no teaching or suggestion to combine the two references and that there is a critical disconnect. The examiner does not concur. For proper motivation the evidence

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may flow from the prior art and must identify reasons why one would have been motivated to combine the references. In the current rejection, Griner discloses a production process for a product. The Walker reference discloses a sales method for a product. The examiner believes that when Griner stated "significant numbers of recordings can be available immediately upon the conclusion of the performance.", the intent was to sell the product in order to make a profit. The Walker reference is merely used to demonstrate that the practice of pre-selling a product is well known and that it could be done at a POS.

Applicant asserts that Walker does not suggest an opportunity to pre-purchase a recording. The examiner did not suggest this either. The examiner believes that Walker teaches the well-known practice of pre-selling products and that this practice could be accomplished at a POS. Griner makes a product and Walker teaches a method of pre-selling the product. The combination meets the metes and bounds of the claim limitations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (703) 308-0610. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 11/1/04
Michael Cuff
November 1, 2004